

granted by the Director, OFHEO Counsel shall provide the party issuing the demand or the court with a copy of the regulations contained in this subpart and shall inform the party issuing the demand or the court that the employee upon whom the demand has been made is prohibited from testifying or producing documents without the prior approval of the Director.

(c) *Appearance by employee served.* Unless OFHEO has authorized disclosure of the information requested, any employee who has OFHEO information that may not be disclosed and who is required to respond to a subpoena or other legal process, shall attend at the time and place required and respectfully decline to disclose or to give any testimony with respect to the information, basing such refusal upon the provisions of this subpart. If the court nevertheless orders the disclosure of the information or the giving of testimony irrespective of instructions from the Director not to produce the documents or disclose the information sought, the employee upon whom the demand has been made shall continue to decline respectfully to disclose the information and shall report promptly the facts to OFHEO for such action as OFHEO may deem appropriate.

(d) A determination under this subpart to comply or not to comply with any demand shall not constitute an assertion or waiver of privilege, lack of relevance, technical deficiencies, or any other ground for noncompliance. OFHEO reserves the right to oppose any demand on any legal ground independent of its determination under this subpart.

#### **§ 1703.40 Responses to demands served on nonemployees.**

(a) OFHEO reports of examinations, or any documents related thereto, are the property of OFHEO and are not to be disclosed to any person without the Director's prior written consent.

(b) If any person who has possession of an OFHEO report of examination, or any documents related thereto, is served with a demand in a legal proceeding directing that person to produce such OFHEO documents or to testify with respect thereto, such person shall immediately notify the Gen-

eral Counsel of such service, of the testimony and described documents in the demand, and of all relevant facts. Such person shall also object to the production of such documents or information contained therein on the basis that the documents are the property of OFHEO and cannot be released without OFHEO's consent and that their production must be sought from OFHEO following the procedures set forth in § 1703.33, paragraphs (b) and (c) of § 1703.34, and paragraph (b) of § 1703.37 of this subpart.

[63 FR 71005, Dec. 23, 1998. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

### **Subpart F—Rules and Procedures for Service Upon OFHEO**

#### **§ 1703.51 Service of process.**

(a) Except as otherwise provided by OFHEO regulations, the Federal Rules of Civil Procedure, or order of a court with jurisdiction over OFHEO, any legal process upon OFHEO, including a legal process served on OFHEO demanding access to its records under the FOIA, shall be duly issued and served upon the General Counsel and any OFHEO personnel named in the caption of the documents.

(b) Service of process upon the General Counsel may be effected by personally delivering a copy of the documents to the General Counsel or by sending a copy of the documents to the General Counsel by registered or certified mail, postage prepaid, to the Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

## **PART 1704—DEBT COLLECTION**

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- 1704.50 Authority and scope.
- 1704.51 Definitions.
- 1704.52 Procedures.

AUTHORITY: 5 U.S.C. 5514; 26 U.S.C. 6402(d); 31 U.S.C. 3701–3720A.

SOURCE: 64 FR 34969, June 30, 1999, unless otherwise noted. Redesignated at 65 FR 81328, Dec. 26, 2000.

### Subpart A—General

#### § 1704.1 Authority and scope.

(a) *Authority.* The Office of Federal Housing Enterprise Oversight (OFHEO) issues this part 1704 under the authority of 5 U.S.C. 5514 and 31 U.S.C. 3701–3720A, and in conformity with the FCCS at 4 CFR chapter II; the regulations on salary offset issued by the Office of Personnel Management at

5 CFR part 550, subpart K; and the regulations on tax refund offset issued by the Internal Revenue Service at 26 CFR 301.6402–6.

(b) *Scope.* (1) This part 1704 applies to debts that are owed to the Federal Government by Federal employees, other persons, organizations, or entities that are indebted to OFHEO, and by Federal employees of OFHEO who are indebted to other agencies, except for those debts listed in paragraph (b)(2) of this section.

(2) Subparts B and C of this part 1704 do not apply to:

(i) Debts or claims arising under the Internal Revenue Code (26 U.S.C. 1 *et seq.*) or the tariff laws of the United States;

(ii) Any case to which the Contract Disputes Act (41 U.S.C. 601 *et seq.*) applies;

(iii) Any case where collection of a debt is explicitly provided for or provided by another statute, *e.g.* travel advances under 5 U.S.C. 5705 and employee training expenses under 5 U.S.C. 4108, or, as provided for by title 11 of the United States Code, when the claims involve bankruptcy;

(iv) Any debt based in whole or in part on conduct in violation of the antitrust laws or involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, unless the Department of Justice authorizes OFHEO to handle the collection;

(v) Claims between agencies; or

(vi) A claim that has been outstanding for more than 10 years after the creditor agency's right to collect the debt first accrued, unless facts material to the Federal Government's right to collect were not known and could not reasonably have been known by the officials charged with the responsibility for discovery and collection of such debts.

(3) Nothing in this part 1704 precludes the compromise, suspension, or termination of collection actions, where appropriate under the FCCS, or the use of alternative dispute resolution methods if they are not inconsistent with applicable law and regulations.

(4) Nothing in this part 1704 precludes an employee from requesting waiver of

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an erroneous payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or from questioning the amount or validity of a debt, in the manner set forth in this part 1704.

[64 FR 34969, June 30, 1999. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

### § 1704.2 Definitions.

The following definitions apply to the terms used in this part 1704, unless the term is defined elsewhere in this part 1704.

(a) *Administrative offset* means an action, pursuant to 31 U.S.C. 3716, in which the Federal Government withholds funds payable to, or held by the Federal Government for a person, organization, or other entity in order to collect a debt from that person, organization, or other entity. Such funds include funds payable by the Federal Government on behalf of a State Government.

(b) *Agency* means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations.

(c) *Claim* or *debt* (used interchangeably in this part 1704) means any amount of funds or property that has been determined by an agency official to be due the Federal Government by a person, organization, or entity, except another agency. It also means any amount of money, funds, or property owed by a person to a State, the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico. A claim or debt includes:

(1) Funds owed on account of loans made, insured, or guaranteed by the Federal Government, including any deficiency or any difference between the price obtained by the Federal Government in the sale of a property and the amount owed to the Federal Government on a mortgage on the property;

(2) Expenditures of non-appropriated funds;

(3) Overpayments, including payments disallowed by audits performed by the Inspector General of the agency administering the program;

(4) Any amount the Federal Government is authorized by statute to collect for the benefit of any person;

(5) The unpaid share of any non-Federal partner in a program involving a Federal payment, and a matching or cost-sharing payment by the non-Federal partner;

(6) Any fines or penalties assessed by an agency; and

(7) Other amounts of money or property owed to the Federal Government.

(d) *Certification* means a written statement received by a paying agency from a creditor agency that request the paying agency to offset the salary of an employee and specifies that required procedural protections have been afforded the employee.

(e) *Compromise* means the settlement or forgiveness of a debt.

(f) *Creditor agency* means the agency to which the debt is owed, including a debt collection center when acting in behalf of a creditor agency in matters pertaining to the collection of a debt.

(g) *Debt*. See *Claim* or *debt* in paragraph (c) of this section.

(h) *Debt collection center* means the Department of the Treasury or any other agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

(i) *Debtor* means the person, organization, or entity owing money to the Federal Government.

(j) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, or retainer pay (or in the case of an employee not entitled to basic pay, other authorized pay) remaining after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders in accordance with 5 CFR parts 581 and 582). Among the legally required deductions that OFHEO must apply first to determine disposable pay are levies pursuant to the Internal Revenue Code (title 26, United States Code) and deductions described in 5 CFR 581.105 (b) through (f), as follows:

(1) Federal employment taxes;

(2) Amounts withheld for the United States Soldiers' and Airmen's Home;

(3) Amounts deducted for Medicare;